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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,150	08/25/2003	Pak Nin Chan	Chan "G" Div.	1305
7590	11/27/2006		EXAMINER	
Delbert J. Barnard BARNARD, LOOP & McCORMACK LLP P.O. Box 58888 Seattle, WA 98138-1888				THAKUR, VIREN A
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/647,150	CHAN, PAK NIN
	<b>Examiner</b>	<b>Art Unit</b>
	Viren Thakur	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date ____	6) <input type="checkbox"/> Other: ____

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. Claim 1 recites the limitation "break-away portion" on lines 13 and 18. It is unclear as to what is meant by break away since any material, such as a plastic, can be broken away from the top of a bottle depending on the amount of force used and the method of breaking.
- b. Claim 1 recites the limitation "engaging said cap in a manner that permits a subsequent consumer to pull up on said holder without removing said holder from cap." The cap does not permit the user to pull up on said holder. Regardless of the cap, the consumer can pull up on the holder and if done without excessive force can pull up on the holder without removing the holder. But depending on the consumer's strength and ability the holder could be completely removed from the cap.

- c. Claim 2 recites the limitation "engaging said portion of said pin." It is unclear as to what is meant by engaging since grasping said outer portion of said pin can be considered engagement of said outer portion.
- d. Claim 3 recites the limitation in "close proximity to" on line 3. It is unclear as to what defines the outer end of the tubular portion as being in close proximity to the inner wall of the mold-defining cavity.

***Claim Rejections - 35 USC § 103***

- 1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
- 2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cecere (US 6565899) in view of Bobis (US 5354191). Cecere discloses a lollipop (Column 1, Lines 44-53), which is a hard candy product (Figure 8, Item 102) disposed on a holder having cup shaped portion (Figure 8, Item 108) and a tubular portion (Figure 6b, Item 106b) projecting from said cup shaped portion. The tubular portion leaves a passageway extending through the holder. Cecere further teaches the steps of providing a reservoir (Figure 1, Item 14) sized and shaped to be gripped by a consumer's hand and filling said reservoir with an edible fluid (Column 2, Lines 37-56) and also coupling said candy product with the cap of said reservoir (Column 2, Lines 37-56 and Figure 6b). Although the candy product assembly is threaded, such a closing means is well known to be able to be snapped into the threads of a bottle versus screwing. As recited in claim 3, Cecere discloses the outer end of the tubular portion in close proximity to, but spaced from, an inner wall of said the mold defining the cavity (Figure 5).

Cecere is silent in teaching the steps of inserting a pin into said holder through said cup-shaped portion and said tubular portion to an outer end of said tubular portion opposite said cup-shaped portion; dispensing liquid candy into a cavity in a mold; inserting said tubular portion with said pin inserted therein into said liquid candy in said cavity; allowing said candy to harden to anchor said tubular portion in said candy; removing the hardened candy from said mold, and removing said pin from said holder to leave a passageway extending through said holder. Regarding claim 2, Cecere is silent in teaching wherein inserting

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said pin into said holder includes snapping an enlarged width portion of said pin into releasable engagement with an inner surface of said cup-shaped portion and maintaining an outer portion of said pin projecting outwardly from said holder opposite said tubular portion; and removing said pin from said holder includes engaging said outer portion of said pin. Regarding claim 3, Cecere is silent in the steps that position the tubular portion in close proximity to but spaced from an inner wall of the mold defining cavity.

Bobis teaches a method of molding a frozen confection onto a holder comprising the steps of inserting a pin (Figure 9, Item 125a) into said holder through said cup-shaped portion and said tubular portion to an outer end of said tubular portion opposite said cup-shaped portion (Column 8, Lines 6-14); dispensing liquid candy into a cavity in a mold; inserting said tubular portion with said pin inserted therein into said liquid candy in said cavity; allowing said candy to harden to anchor said tubular portion in said candy; removing the hardened candy from said mold (Column 5, Lines 1-19), and removing said pin from said holder to leave a passageway extending through said holder (Column 6, Lines 40-54; Column 8, Lines 6-20). Bobis further teaches that said pin (Figure 9, Item 125a) is releasably engageable with the tubular portion of the cup (Column 8, Lines 6-11) and maintains an outer portion of said pin projecting outwardly from said holder opposite said tubular portion (Figure 9, Item 125a) and engaging said outer portion of said pin (Column, Lines 6-20 and Figure 9). Bobis further

teaches wherein the outer end of said tubular portion is in close proximity to but spaced from, an inner wall of said mold defining cavity (Figure 6).

Although Cecere does not provide the details of the manufacture of the molding of the candy onto the holder, Bobis teaches a method of manufacturing a confection by dipping a holding apparatus into a cast molding that contains a hardening liquid, and wherein the holding apparatus comprises a tubular portion designed to allow for the passage of a liquid there through. Although used for a frozen confection such a process for cast molding by dispensing liquid candy into a mold and subsequently hardening is a well known method for manufacturing lollipops. Thus it would have been obvious to one having ordinary skill in the art to incorporate the steps to form a molded hard candy by the method taught by Bobis.

Furthermore, Bobis teaches that in order to provide a passageway from within a tubular portion of a holder, a plugging element must be positioned within the tubular portion. While waiting for the liquid to harden around a holding piece, the absence of such a plug will permit the liquid to pass into the tubular section of the mold; thus preventing a passageway for the dispensing of a fluid. Bobis teaches the importance of preventing filling of this passageway (Column 6, Lines 40-54), and thus provides motivation to one having ordinary skill in the art to insert a pin through a passageway while molding a hard candy for the purpose of preventing the filling of the passageway formed therein with the hardening candy. In order to allow for the passage of fluid through the tubular passageway, it would

have been obvious to remove the pin, as taught by Bobis, since the pin prevents the movement of fluid from the tubular portion.

Regarding the break away seal, Cecere teaches that the candy product assembly can be attached to any commercially available beverage or sold in combination with a pre-filled beverage container (Column 5, Lines 30-35). Commercially available bottles requiring user action to break-away seals are well known in the art, as evidenced by Figure 3 of Mikulec et al. (US 5137183) and Lipari (US 2807384). Therefore, providing a pulling means to remove a break-away portion and allow fluid communication between the reservoir and the passageway would not provide a patentable distinction over the prior art.

Regarding claim 2, providing a snapping means for securing said pin into said cup-holding portion would have been obvious for the purpose of ensuring that the pin maintains its position while molding the hard candy. Bobis ensures the security of the pin by providing a snug engagement with the inner walls of the holder. Whether the means for securing the pin to the cup-holding portion was made by snapping said pin into place or ensuring a tight fit, both are common techniques for securing items that are well known to one having ordinary skill in the art.

Regarding claim 3, although Cecere does not provide a method of manufacturing the candy product, Cecere discloses wherein the tubular portion is in close proximity to be spaced from the candy, and thus would be spaced from the inner wall of the mold defining cavity. Given the teachings of Bobis, such a

step would have been obvious to one having ordinary skill in the art for the purpose of providing a portion of the tubular portion that is able to be gripped by the consumer thus allowing easy handling of the finished product. Centering the tubular portion also provides a balanced mold around the holder, thus making the candy easier to handle.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 2673374 discloses a method of fabricating articles of plastic material by inserting a pin through an opening so as to provide a tubular passageway after molding said article. US 4229482 discloses a method of making a lollipop comprising molding a lollipop comprising a tubular holding portion. A pin is inserted into the tubular holding portion for depositing a fluid within the candy. US 2766123 discloses a frozen confection, cup and pipette wherein the pipette is the holder for the frozen confection and is attached to a cup. The cup and the pipette allow for fluid to pass through so that the user can drink the melting frozen confection. US 2190231 discloses a lollipop that is manufactured by common techniques such as molding while in the plastic state or by dipping. US 3702495 disclose a method for producing compression molded candles by inserting a pin through a tubular portion and molding the candle around the inserted pin and tubular portion. US 2166568 discloses a

method for wrapping articles such as candy by inserting a feeding needle through a hollow tubular holder and wherein the liquid candy passes through the tubular holder and into the mold. US 1952688 discloses a method of making a confection by inserting a tubular portion and subsequently inserting a pin portion within said tubular portion. Berins discloses dip coating and dip molding methods used for forming hollowed objects.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur  
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Art Unit: 1761



KEITH HENDRICKS  
PRIMARY EXAMINER